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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 01 042 52072 Office: CALIFORNIA SERVICE CENTER Date: JAN 20 2004

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center acting director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a sewing contractor that seeks to employ the beneficiary as an accountant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and a credentials evaluation for the beneficiary.

The director denied the petition based on his finding that the evidence of record had not established that the beneficiary was qualified to serve in a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

> (*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*3*) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
>
> (*4*) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Before issuing its decision, the AAO reviewed the record in its entirety, including (1) the Form I-129 and its supporting documentation; (2) the director's request for additional evidence; (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B and the brief and additional evidence that accompanies it.

The petitioner is seeking the beneficiary's services as an accountant. It relies exclusively upon the beneficiary's work experience to qualify the beneficiary for that position in accordance with 8 C.F.R.

§ 214.2(h)(4)(iii)(C). The documentation of the beneficiary's work experience consists of letters from two Korean firms that had formerly employed him. A letter from Dong Bang Machine Ind. Co., Ltd. confirms the beneficiary's employment as part of that firm's accounting staff from August 1981 to December 1985. The second letter, from Jungwoo Mutual Savings & Finance Co., Ltd., generally describes the beneficiary's employment in its accounting division from December 1985 until July 1988.

Counsel's response to the director's request for evidence on the beneficiary's educational background stated that the beneficiary had no college-level education, but that the beneficiary "has the educational background equivalent to that of an individual with a bachelor's degree in accounting based on his 17 years of progressively responsible positions in accounting," including positions as "Junior Accounting Clerk, Senior Accountant, and Chief Accountant."

To support its contention that the beneficiary's work experience is equivalent to a U.S. bachelor's degree in accounting, the petitioner had included in its initial filing an approximately one-half page document, entitled "Evaluation Report," in which a firm identified as the Foundation for International Services (FIS) opined that the two employer letters were sufficient to establish that the beneficiary had attained the equivalent of a U.S. bachelor's degree in accounting.

The acting director declined to accord any evidentiary value to the FIS evaluation, and he found no evidence that otherwise qualified the beneficiary to serve in the accountant specialty occupation.

In response to the denial of the petition, counsel now presents another evaluation of the beneficiary's work experience. It is a January 15, 2002 memorandum, entitled "Professional Evaluation," by a professor of economics and finance at the Zicklin School of Business Administration, at Baruch College of the City University of New York, which states, in part, that its author is an evaluator of "foreign credentials" with "authority to grant college level credit for Baruch College-CUNY based on a candidate's foreign educational credentials, training, and/or employment experience in the fields of Business Administration, Finance, Accounting, and related areas." The letter culminates in the statement that, based on the beneficiary's approximately 17 years "of progressively responsible work experience and training in accounting, financial statement analysis, management, and related areas, it is my judgment that that [the beneficiary] attained the equivalent of a Bachelor of Science Degree in Accounting from an accredited institution of higher education in the United States." Counsel maintains that this professor's evaluation is sufficient by itself to establish that the beneficiary is qualified to perform services in the specialty occupation of accounting.

As discussed below, the acting director's denial must stand, because the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires at least a baccalaureate degree in a specific specialty.

The beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*), (*2*), or (*3*). No state license, registration, or certification is relevant to the proffered position, and the evidence does not establish that the beneficiary holds either a baccalaureate degree from an accredited U.S. college or university, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Counsel in effect asserts that the beneficiary qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*), that is, by virtue of the Zicklin School of Business professor's evaluation. Thus, counsel presents the professor as an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

On each of several grounds, the AAO determined that the professor's evaluation document merits no evidentiary weight. First, the record contains no independent evidence that the professor's educational institution has a program for granting college credit on the basis of training and/or work experience. Second, there is no independent evidence that the professor's educational institution has authorized him to grant such credit. Third, even if the record had established the professor's authority to grant college credit – which it did not do – the professor's opinion, and some material statements on the way to that opinion, appear to be based on very limited knowledge of the details of the beneficiary's work experience.

The professor's evaluation appears to be based on the two employer letters, and these provide no information about the academic degrees, if any, or other accounting credentials that may have been held by the beneficiary's supervisors and peers. This is particularly noteable in light of the fact that the beneficiary himself held the second employer's chief accountant position, although he has no formal education in accounting. Furthermore, the employer letters provided few details about the nature of the accounting tasks which engaged the beneficiary. For instance, the second employer does not detail the "financial information" that the beneficiary prepared, the "financial reports" that he made, the types of presentations that he made, the statistics that he compiled, or the matters in which he supervised other accountants.

With regard to the third ground for the AAO's discounting the professor's opinion, it should be noted that Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).
The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*) does not come into play, as there is no evidence of college-level equivalency examinations or special credit programs.

There is no evidence to consider with regard to an education evaluation by a reliable credentials evaluation service 8 C.F.R. § 214.2(h)(4)(iii)(D) (*3*). The AAO agrees with the acting director's decision to not accord any evidentiary value to the FIS evaluation. It is virtually silent on how it arrived at its conclusion, and should be discounted on that basis alone. Moreover, pursuant to the explicit terms of this regulatory provision, CIS will not accept a credentials evaluation service's opinion that is based on an alien's work experience or training. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

As there is no evidence of certification or registration from a nationally-recognized professional association or society for any specialty, 8 C.F.R. § 214.2(h)(4)(iii)(D)(*4*) is not a concern.

The remaining question, then, is whether there is sufficient evidence for the AAO to determine, under the auspices of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), that (1) the necessary degree equivalency has been acquired through a combination of education, specialized training, and/or work experience, and (2) the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. In light of the evidence, the answer must be negative.

For CIS determinations of an alien's qualifications pursuant to it, 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) expressly requires that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. Furthermore, the evidence must clearly demonstrate that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation[1];

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

[1] *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Given the very general and limited nature of their content, the two employer letters do not clearly demonstrate that the beneficiary's duties had included the theoretical and practical application of specialized knowledge required by the accountant occupation.

Next, the AAO notes that the evidence of record does not clearly demonstrate that the beneficiary gained his work experience with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. It should be noted that the AAO does not accept any of the Zicklen School of Business professor's description of the beneficiary's work experience that exceeds what has been documented in the record.

Finally, the record contains no recognition-of-expertise documentation similar to the types listed at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(*i*) through (*v*).

As related in the discussion above, the record does not establish that the beneficiary has attained the equivalent of a U.S. bachelor's degree in accounting. Therefore, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.